

REMARKS

This is in full and timely response to the above-identified Office Action. The above listing of the claims replaces all prior versions, and listings, of claims in the application. Reexamination and reconsideration in light of the proposed amendments and the following remarks are respectfully requested.

Claim Amendments

Claims 1 and 9 have been amended to further clarify the claimed subject matter. For example, claim 1 has been amended to recite that a casual user is an individual who is required to interact with an exchange application but is not registered with an exchange security mechanism. Claim 1 has been further amended to recited that the response to the event detection and the generation of the CS-PIN are both automatic. Support forth these amendments are found in the specification taken as a whole.

Rejection under 35 USC § 101

The rejection of claims 1-8 under 35 USC § 101 as being directed to non-statutory subject matter, is traversed.

The rejection states that claims 1-8 are directed to “a method of providing access to a casual user.” This is an incorrect analysis of the subject matter claimed. The claims are directed to a “method of providing a casual user access to an electronic exchange via interaction with a casual access application.” This misunderstanding is deemed sufficient to render the rejection untenable.

In fact, claim 1 does not claim a computer program per se (as alleged in the Office Action) since it recites a method (or process) which is one of the explicitly statutory categories in § 101. Furthermore, since the method relates to an electronic exchange application, it is clearly within the technological arts.

It is also respectfully submitted that the patent to Gohl (cited as teaching a substantial amount of the claimed subject matter) is directed to “providing user access via interaction with a casual access application” and is directed to statutory subject matter as evidenced by the fact that it has been patented. Indeed, the claimed subject matter is such as provide a new and useful process which provides a new and useful result

Rejections under 35 USC § 103

- 1) The rejection of claims 1-5, 7-14 and 16-18 under 35 USC § 103(a) as being unpatentable over Gohl in view of Aziz, and further in view of Tozzoli, is respectfully traversed.

The rejection is firstly traversed in that the Gohl and Aziz do not discloses the current claim limitations:

- a) detecting an event within an electronic exchange application which is run in the electronic exchange wherein the electronic exchange application determines that some interaction with an external application is necessary;

The reference to Tozzoli is cited to overcome the admitted shortcoming that the combination of Gohl and Aziz is silent on detecting an “event” within an electronic exchange application which is run in the electronic exchange wherein the electronic exchange application determines that some interaction with an external application is necessary. It is advanced that Tozzoli discloses this “event” at column 13, line 9-28 and it is suggested that motivation for a transfer of these teachings to the combination of Gohl and Aziz is that it would “further simplify user access to [the] electronic exchange.”

However, column 13, lines 9-28 of Tozzoli disclose:

The system then transmits data representing the proposed purchase order and its payment guarantee information to the seller (step 200), transmits data notifying the buyer that this information has been delivered to the seller and updates the account information for the buyer and seller. It will be appreciated that the trade system stores the proposed purchase order and otherwise updates appropriate internal files. For example, the buyer's account information would now include a proposed purchase order to Mexiteeco. It is preferred that the proposed purchase order be delivered as an electronic mail type message to the seller, that is, the seller does not have to be interacting

with the system at the same time as the buyer. **When the seller reviews the electronic mail message including the proposed purchase order, this event is detected, for example, by the seller's terminal that, in turn, transmits data indicating the same to the trade system. The trade system then notifies the buyer of this event by a data message, or else simply updates a status field of the stored proposed purchase order and waits for the buyer to submit a status inquiry for the purchase order.**

(Emphasis added)

Thus, the detection of an "event" such as the seller reviewing the purchase order and the buyer being notified of this, merely relates to the two parties and only the two parties which are involved (viz., the buyer and the seller) being kept informed of the transaction. There is nothing "casual" about the "buyer" or the "seller" nor anything to suggest that this information is to be made public and available for a "casual user" who has nothing directly to do with the offer for sale and the subsequent purchase. Indeed, without disclosure to the contrary, it would have to be assumed that, at the very least, both the buyer and the seller (and probably the funder) would deliberately strive to have the purchase order remain confidential and not made available (viz., public) to a "casual" user of the system.

There is therefore nothing to suggest that the application of these teachings to Gohl and Aziz would simplify the access to the electronic exchange system. The access in Tozzoli has been already been established in that buyer and the seller must have had access to the system to get to this proposed purchase order point in the seller-purchaser negotiation. There is no access simplification even remotely suggested as stemming from this "event" disclosed in Tozzoli. Further, how communications between the buyer and the seller would simplify "access" in the combination of Gohl and Aziz, is neither disclosed nor suggested.

Further, there is nothing in any of the references applied in this Office Action that would suggest:

- b) responding to the event detection by generating and transmitting an external message to said casual user containing information on accessing said casual access application; (emphasis added)

The event in Tozzoli is nothing more than a shuttle of information back and forth between the buyer and the seller and merely keeps the seller in mid-negotiations and the buyer apprised that one has seen the indication provided by the other. It is not even clear if the funder (the entity providing financial support – see abstract of Tozzoli) is even provided with this feedback. Clearly, no third party (e.g. casual observer/user) is privy to these goings on and would not be able to ascertain if it were going on at all.

The “event” in Tozzoli merely induces an internal message which is sent between the buyer and the seller and most certainly does not trigger an external message to a casual user. Note at this point that the instant specification defines a casual user as being “any individual who is required to interact with an exchange application but is not registered with the exchange security mechanism” – see paragraph [0013] of the publication (20020184100 A1) of the instant application.

Indeed, as noted above, common tendencies toward privacy would suggest that any information relating to the sale would remain the exclusive knowledge of the seller, buyer and the funder, unless clear suggestion to the contrary was to be presented. Since the rejection fails to provide this suggestion, a *prima facie* case of obviousness is not established.

The rejections are further seen as being defective in Gohl discloses a “casual” user as different from a validated fully authorized user (often referred to as a “power user”). The Gohl reference is devoid of the term “casual” or anything equivalent and it is not seen that this is any support for the position that this reference teaches “casual” access or use. Paragraphs 28 and 56 of Gohl are quoted in this connection. However, these passages do not disclose that there are two classes of “client” and as such cannot be relied upon to teach that the “special program” is sent to anything other than a validated fully authorized user.

Indeed, there would have to be two classes of “client” disclosed before this “casual user” position could be considered tenable. That is to say, if there is a “casual” user then there must be a “more-than-casual” user (i.e. validated fully authorized user).

The rejection fails to establish the necessary aspect of user rank so that the use of “casual” has meaning in the rejection.

The rejection therefore fails to establish that the “special program” would be sent to one type of user and not another, and fails to provide the hypothetical person of ordinary skill with any reason to even suspect that there might be two different ranks of users being discussed in Gohl.

A Google™ search reveals 914 hits where both the terms “casual user” and “power user” are used. A USPTO website search revealed 9 patents that used both terms - see attached Appendix. Accordingly, it is clear that the term “casual user” has an accepted meaning in the art to which the present invention pertains.

Even if resort is made to the dictionary meaning of the term “casual” which is fundamentally improper in that the claims must be interpreted in accordance with the understanding a person of ordinary skill in the art, still a tenable position cannot be established – the rejection is not made under § 102 but § 103 – and the meaning of “casual” is “without ceremony or formality” anyway.

The rejection is traversed in that it appears that the rejection is founded on an improper assumption that all users are casual users and that “casual” is, as a result not being attributed the meaning that it must. See MPEP 2111.01 wherein it is stated:

Claim terms are presumed to have the ordinary and customary meanings attributed to them by those of ordinary skill in the art. *Sunrace Roots Enter. Co. v. SRAM Corp.*, 336 F.3d 1298, 1302, 67 USPQ2d 1438, 1441 (Fed. Cir. 2003); *Brookhill-Wilk 1, LLC v. Intuitive Surgical, Inc.*, 334 F.3d 1294, 1298 67 USPQ2d 1132, 1136 (Fed. Cir. 2003) (“In the absence of an express intent to impart a novel meaning to the claim terms, the words are presumed to take on the ordinary and customary meanings attributed to them by those of ordinary skill in the art.”).

Aziz is cited to cure the acknowledged shortcoming that Gohl does not disclose storing a CS-PIN in a CS-PIN holder, where the CS-PIN holder is independent of the casual access application and the casual user.

The cited sections of Aziz disclose:

As illustrated in the flowchart of FIG. 3, the client workstation 40 through the source server 44 provides a login comprising an anonymous ftp, to the destination server 42. In addition, the client workstation 40 provides a password comprising the user's electronic mail name. The use of an anonymous ftp provided over the Internet 20 effectively results in a secure password channel over the Internet. This password is then used to secure another Internet connection. As illustrated in FIG. 4, the destination server 42 receives the login request comprising an anonymous ftp in conjunction with the user's e-mail address as a password. The destination server 42 compares the client workstation 40 electronic mail name to its list of authorized users. If the user's electronic mail name (in the present example, client workstation 40) **is not on the list of authorized users, the client login request is rejected.**

If the identified user is on the list of authorized users, then, as illustrated in FIG. 4, the destination server 42 generates a random number (X) which will be used as a one-time password. An ASCII representation of the random number is encrypted using the PEM algorithm, and is placed in a file in the user's anonymous directory using PEM encrypted message procedures. As shown in FIG. 4, the destination server 42 establishes the encrypted ASCII representation of the random number X as the one-time password for the user

It will be appreciated that the encrypted random number password is addressed only to the user operating workstation 40. **Only the authorized user operating workstation 40 can decrypt the encrypted random**

number password. As illustrated in the flowchart of FIG. 3, the client workstation 40 does an ftp to obtain the encrypted PEM random number password from the destination server 42. The destination server 42 sends the encrypted PEM random number password to the workstation 40 over the Internet 20. Although an inhaler can detect the encrypted random number password over the Internet 20, **only the authorized user of workstation 40 can decrypt** the random number password in accordance with the teachings of PEM. The workstation 40, using the PEM decryption methodology, decrypts the encrypted PEM file using the PEM users private RSA key. (Emphasis added)

Again we have nothing that would suggest that there is a differentiation between types of user and nothing that would suggest that any of this disclosure is directed to "casual user" issues. Indeed, the bolded sections would seem to indicate that the disclosure is directed to only dedicated or validated fully authorized users. Indeed, there is no suggestion of user rank and nothing at all to suggest that these teachings are to be applied to a "casual user" as different from any other user rank.

It is submitted that, in order to establish a *prima facie* case of obviousness, it is necessary to show that the hypothetical person of ordinary skill would, without any knowledge of the claimed subject matter and without any inventive activity, be motivated to arrive at the claimed subject matter given the guidance of the cited references when each is fully considered as statutorily required.

In connection with motivation, case law establishes that there are three possible sources which would lead the hypothetical person of ordinary skill to combine references: the nature of the problem to be solved; the teachings of the prior art; and the knowledge of persons of ordinary skill in the art. *In re Rouffet*, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998).

This case law, however, establishes that, even if the combination of the references may possibly teach every element of the claimed invention, without a motivation to combine, a rejection attempting to establish a *prima facie* case of obvious

must be held improper. Additionally, the level of skill in the art cannot be relied upon to provide the suggestion to combine references. *Al-Site Corp. v. VSI Int'l Inc.*, 174 F.3d 1308, 50 USPQ2d 1161 (Fed. Cir. 1999).

It therefore appears that the rejections advanced in this Office Action cannot be deemed tenable for at least the reasons advanced above.

- 2) The rejection of claims 6 and 15 under 35 USC § 103(a) as being unpatentable over Gohl, in view of Aziz, further in view of Tozzoli and further in view of Sormunen et al. is respectfully traversed.

It is respectfully submitted that the teachings of Sormunen do not add anything to the teachings of the other three references which have been discussed supra. Therefore, this rejection is deemed untenable for at least the reasons discussed in connection with the basic combination which is relied upon for rejection.

Newly added Claims

New claims 19 and 20 are added in this response. These claims respectfully depend from claims 9 and 14, and find full support in the originally filed specification. See paragraph [0013] of the patent publication 10020184100 A1. This subject matter is patentable over the cited art for at least the reasons advanced above in connection with the claims they depend from.

Conclusion

It is submitted that the claims as the stand before the USPTO are allowable over the art for at least the reasons advanced above. Favorable reconsideration and allowance of this application is courteously solicited.

Respectfully submitted,

Date 10/27/2005

By 

FOLEY & LARDNER LLP
Customer Number: 22428
PATENT TRADEMARK OFFICE
Telephone: (202) 672-5485
Facsimile: (202) 672-5399

William T. Ellis
Registration No. 26,874
Keith J. Townsend
Registration No. 40,358